APPENDIX A

INTERSTATE COMMERCE COMMISSION

Served May 16, 1960

NOTICE TO THE PARTIES

Exceptions, if any, must be filed with the Secretary, INTERSTATE COMMERCE COMMISSION, Washington, D. C., and served on all other parties in interest, within 30 days from the date of service shown above, or within such further period as may be authorized for the filing of exceptions. At the expiration of the period for the filing of exceptions, the attached order will become the order of the Commission and will become effective unless exceptions are filed seasonably or the order is stayed or postponed by the Commission. To be seasonably filed, exceptions must reach the Commission on or before the date they are due. If exceptions are filed, replies thereto may be filed within 20 days after the final date for filing exceptions. The stated specific time periods apply to all parties and give full effect to Rule 1.21(c) of the General Rules of Practice to the extent, if any, the provisions of such rule otherwise would be applicable to this proceeding. If the recommended order becomes effective as the order of the Commission, a notice to that effect, signed by the Secretary, will be served.

No. MC-C-2671 [1]

[1] This report also embraces No. MC-C-2696, Pennsylvania Public Utility Commission v. Arrow Carrier Corporation; No. MC-113933, Hudson Transportation Company—Petition for Declaratory Order; and Nos. MC-71536, MC-71536 (Sub-Nos. 1, 2, and 3), Arrow Carrier Corporation—Petition for Declaratory Order.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

v.

HUDSON TRANSPORTATION COMPANY

Decided .....

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1. In No. MC-C-2671 and No. MC-C-2696, defendants found to be performing unauthorized transportation as a motor carrier of certain traffic between specified points in Pennsylvania via points in New Jersey. Cease and desist order entered.

2. In No. MC-113933, No. MC-71536, and No. MC-71536 (Sub-Nos. 1, 2, and 3), determination of all matters to which the petitioners' petitions are directed found to have been determined in the complaint proceedings. Petitions denied.

William A. Goichman for complainant in No. MC-C-2671 and No. MC-2696, and intervenor in opposition to the petitioners in Nos. MC-113933, and MC-71536 and MC-71536 (Sub-Nos. 1, 2, and 3).

Richard V. Zug and *August W. Heckman* for petitioner in No. MC-113933, and defendant in No. MC-C-2671.

Christian V. Graf and *Spencer R. Liverant* for petitioner in No. MC-71536 and No. MC-71536 (Sub-Nos. 1, 2, and 3), and intervenor in support of petitioner in No. MC-113933.

Edwin A. Gehring for intervenor in support of petitioner in No. MC-113933, and in opposition to other petitioner.

Paul F. Barnes for intervenors in support of complainants and in opposition to the petitioners.

REPORT AND ORDER

RECOMMENDED BY H. L. HANBACK, HEARING EXAMINER

By complaint in No. MC-C-2671, filed August 24, 1959, Pennsylvania Public Utility Commission, hereinafter called P.U.C., or complainant, alleges in effect that Hudson Transportation Company, hereinafter called defendant, or Hudson, or petitioner, has transported property by motor vehicle between certain points in Pennsylvania over routes through points in New Jersey, without first having obtained certificates of public convenience and necessity from the Interstate Commerce Commission, as required by sections 203(c) and 206(1) of the Federal Motor Carrier Act, or having obtained a certificate of public convenience from P.U.C., as required by section 202(b) and 202(c) of the Public Utility Law, and as a subterfuge to the jurisdiction of complainant.

By complaint in No. MC-C-2696, filed October 8, 1959, P.U.C. alleges in effect that Arrow Carrier Corporation, hereinafter called defendant, or Arrow, or petitioner, has transported property by motor vehicle between certain points in Pennsylvania over routes through points in New Jersey, without first having obtained a certificate of public convenience and necessity from the Interstate Commerce Commission, as required by sections 203(c) and 206(1) of the act, or having obtained a certificate of public convenience from P.U.C. as required by sections 202(b) and 202(c) of the Public Utility Law, and as a subterfuge to the jurisdiction of complainant.

Complainant also urges the Commission to issue an order requiring each defendant to cease and desist from the alleged violations of the Federal Motor Carrier Act

and the Public Utility Law of Pennsylvania. Answers to the complaints were filed by defendants.

By petition filed by Hudson on October 23, 1958, in No. MC-113933 and by petition filed by Arrow on August 31, 1959, in No. MC-71536 and Sub-Nos. 1, 2, and 3, each petitioner requests an order interpreting its outstanding certificates; or, that the Commission enter a declaratory order finding; (1) that its certificates were not intended to, nor do they, limit the transportation to shipments moving between points in Pennsylvania, on the one hand, to points in other States, on the other; and (2) that petitioner under its certificates may conduct interstate operations between Pennsylvania points through the New Jersey gateway to the extent specified in its certificates and may interchange or interline shipments moving from or to points in Pennsylvania beyond its authorized areas of service with connecting interstate carriers so long as such traffic moves through New Jersey. They urge the Commission to issue such order or orders as may be proper in the premises.

The complaints and petitions were referred to the examiner for hearing and the recommendation of an appropriate order thereon. The complaints in Nos. MC-C-2671 and MC-C-2696, and the petitions were heard on a consolidated record at Philadelphia, Pa., on October 13, and 14, and December 3, 1959. Highway Express Lines, Inc., Rodgers Motor Lines, Inc., Fowler and Williams, Inc., and Modern Transfer Co., Inc., support the complaints, and oppose the petitions. Arrow supports the petition of Hudson. Motor Freight Express supports the petition of Hudson, and oppose the petition of Arrow. Complainant opposes each petition. Briefs were seasonably filed by complainant and defendants, and by intervenors who support the complaints.

Complainant points out that in 1958 it determined that Hudson and certain other carriers, including Jones Motor Co., were transporting Pennsylvania intrastate traffic between the points here involved via New Jersey points as a subterfuge to avoid its jurisdiction, that it issued cease and desist orders, and that the complaints here involved were filed as a result of recent decisions of the United States Supreme Court in *Service Storage and Transfer Co., Inc. v. Commonwealth of Virginia*, 359 U.S. 171, and *Jones Motor Co. v. Pa. P.U.C.*, 361 U.S. 11, in which the State Commissions were reversed for lack of jurisdiction.

The complainant in No. MC-C-2671 alleges and Hudson admits, that during the period about January 10, 1958 to August 29, 1958, that carrier transported a total of about 49 shipments of freight from Philadelphia to 22 points in Pennsylvania within 40 miles of Stroudsburg, including Scranton and Allentown, that during the same period Hudson transported a total of five shipments from Scranton, Wilkes-Barre, West Pittston, West Wyoming and Kingston, Pa., to Philadelphia, and that all of these shipments moved through a point or points in New Jersey. The complainant in No. MC-C-2696 alleges and Arrow admits, that during the period about July 31, 1958 to August 23, 1958, that carrier transported a total of 10 shipments of freight from Scranton, Bangor, Allentown, Shamokin, Wilkes-Barre and Swoyersville, Pa., to Philadelphia, that during the same period Arrow transported a total of seven shipments of freight from Philadelphia to Catasauqua, Muncy, Shamokin, White Haven, and Scranton, Pa., and that all of these shipments moved through a point or points in New Jersey.

Three investigators employed by P.U.C. used a car to follow the vehicles utilized by Hudson and Arrow in the

movement of the shipments described in the complaints. One of the investigators recalled, for example, that on August 13, 1958, Hudson's loaded truck traveled from Philadelphia over the Tacony-Palmyra Bridge and New Jersey Highway 73 to junction U. S. Highways 130, thence over U. S. Highways 130 and 206 to Trenton, thence over New Jersey Highway 69 to junction U. S. Highway 46 to junction U. S. Highway 611 near Columbia, N. J., and thence over U. S. Highway 611 via Stroudsburg, Pa., to the carrier's terminal in Scranton, about 160 miles, and that no stops were made to pickup or deliver freight at any point in New Jersey. Another investigator recalled that on August 28, 1958, a Hudson tractor and trailer arrived at Bartonsville, Pa., on U. S. Highway 611, and from that point the vehicle traveled over Pennsylvania Highways 12, 512 and 946 via Wind Gap and Bath Pa., to Hudson's terminal in Allentown, thence over U. S. Highway 22 via Phillipsburg, N. J., to junction New Jersey Highway 69, and thence over the route described above via Trenton to the terminal of Williams Begley in Philadelphia. He also recalled that on August 29, 1958, the same tractor and trailer traveled from Philadelphia to Bartsonville over the above-described route via Allentown, and thence over U. S. Highway 611 to the carrier's terminal in Scranton, that on September 11 and 12, 1958, another Hudson tractor and trailer traveled over this route in each direction between Philadelphia and Scranton, and that the distances over the routes traveled from Philadelphia to Allentown and Scranton is about 106 miles, and 185 miles, respectively. The driving time to Scranton is about 5 1/6 hours. The vehicles followed by this witness were not stopped to pickup or deliver freight at any point in New Jersey. This witness also followed Arrow's truck on November 19, 1959, from Scranton over Pennsylvania Highway 307 to junction U. S. Highway 611,

thence over U. S. Highway 611 to junction U. S. Highway 46, thence over U. S. Highway 46 via Columbia, N. J., to junction New Jersey Highway 519, thence over New Jersey Highway 519 to junction New Jersey Highway 24 and thence over New Jersey Highway 24 to Phillipsburg. The distance over this route is about 75 2/10 miles. He also followed Arrow's truck on October 29, 1959 from Philadelphia over U. S. Highway 1 to Trenton, thence over New Jersey Highway 69 to junction U. S. Highway 22 at Clinton Corners, N. J., thence over U. S. Highway 22 to Phillipsburg, and the driving time was about 2 1/2 hours. On October 2, 1959, another investigator drove his car over U. S. Highway 309 from Arrows' terminal in Philadelphia to the carrier's terminal in Allentown. The speedometer on the car registered 52 4/10 miles, and the driving time was about 1 5/6 hours. This witness also drove his car on October 23, 1959, from Arrows' terminal in Philadelphia over the Pennsylvania Turnpike Extension and connecting highways to the carriers' terminal in Allentown. The speedometer on the car registered 71 miles, and the driving time was 2 hours and 3 minutes.

Modern Transfer Company holds Pennsylvania intrastate authority which is utilized by that carrier in the transportation of general intrastate freight between its terminals at Philadelphia and Allentown over U. S. Highway 309, about 52 miles, and the average driving time is about two hours in each direction. Its representative is aware that the route used by it is the most direct and shortest route between Philadelphia and Allentown.

Highway Express Lines holds Pennsylvania intrastate authority which is used in the transportation of general intrastate freight from Philadelphia over unspecified highways to King of Prussia, Pa., thence over U. S. Highway

202 to junction U. S. Highway 309, thence over U. S. Highway 309 to Central Valley, Pa., thence over Pennsylvania Highway 12 to Bethlehem, Pa., thence over Pennsylvania Highways 512 and 12 via Bath and Wind Gap, Pa., to Bartonsville, Pa., thence over U. S. Highway 611 to Scranton, and return over the same route. The distance over this route from the carrier's terminal in Philadelphia to its terminal in Scranton is between 130 and 135 miles, and the average driving time is between 4 1/2 and 4 3/4 hours in each direction. The route used by this carrier is termed the most direct and shortest route between Philadelphia and Scranton.

Hudson is operating under certificated rights purchased from Joseph Kowaski. On June 5, 1945, Kowaski purchased certificate No. 30001 (Sub-No. 1) from Bushnell Carrier, Inc. This certificate authorized, so far as here pertinent, the transportation of general commodities, with the usual exceptions, between Stroudsburg, Pa., and points within 40 miles thereof, on the one hand, and, on the other New York, N. Y., and points in Bergen, Essex, Hudson, Middlesex, Morris, Passaic, Somerset, Sussex, Union, and Warren Counties, N. J., over irregular routes. The transaction was approved in MC-FC-20109. On January 3, 1946, Kowaski purchased certificate No. MC-30001 from the same carrier. This certificate authorized, so far as here material, the transportation of general commodities, with the usual exceptions, between Philadelphia, Pa., on the one hand, and, on the other, points in Warren, Sussex, Morris, and Somerset Counties, N. J., over irregular routes. Consolidated certificate No. MC-105946, comprising the purchased rights, was issued to Kowaski on June 16, 1950. Purchased by Hudson of the certificated rights held by Kowaski was approved December 15, 1952, in No. MC-FC-

53921, and certificate No. MC-113933, comprising these operating rights was issued to Hudson on June 9, 1953. The authority to operate between Philadelphia and points in New Jersey is described in one paragraph, and the authority to operate between New Jersey points and points in the Stroudsburg area is described in another paragraph in the same certificate. All points in Warren County, including Phillipsburg, Buttzville, and Dunnfield, N. J., are authorized points of service in connection with the separately described operating authorities. Since about October 7, 1956, Hudson has been tacking the separately described authorities operating through a point or points in Warren County, and providing overnight service daily on trailerloads of general freight between Philadelphia, on the one hand, and, on othe other, various Pennsylvania points within 40 miles of Stroudsburg. Shipments from Philadelphia to Scranton and other points in the northern portion of the Stroudsburg area, hereinafter called the Scranton area, are transported daily from Philadelphia across the Tacony-Palmyra Bridge and over New Jersey Highway 73 to junction U. S. Highway 130, thence over U. S. Highway 130 to junction U. S. Highway 206, thence over U. S. Highway 206 to Trenton, N. J., thence over New Jersey Highway 69 to junction U. S. Highway 22 at Clinton Corners, N. J., thence over New Jersey Highway 69 to junction U. S. Highway 46, thence over U. S. Highway 46 to junction U. S. Highway 611, at or near Columbia, N. J., thence over U. S. Highway 611 via Stroudsburg and Bartonsville, Pa., to Hudson's terminal in Scranton. That portion of the freight destined to other points in the Scranton area is handled in a pickup and delivery truck which operates out of the Scranton terminal. This route is also used for the movement of southbound traffic from Scranton and points in the Scranton area to Philadelphia. Ship-

ments from Philadelphia to Allentown and other points in the southern portion of the Stroudsburg area, hereinafter called the Allentown area, are transported daily over the routes described above to junction U. S. Highway 22 at Clinton Corners, thence over U. S. Highway 22 via Phillipsburg to the Allentown terminal. Freight destined to other points in the Allentown area is handled in a pickup and delivery truck that operates out of the Allentown terminal. On occasions when the tonnage available for movement from Philadelphia to Allentown and Scranton can be transported in a single vehicle, Hudson transports the freight over above-described route via Phillipsburg to Allentown, and, after delivery of the Allentown freight the road truck is dispatched from that point over U. S. Highway 22 to junction Pennsylvania Highway 987, thence over Pennsylvania Highways 987, 512, and 12 via Bath and Wind Gap, Pa., to Bartonsville, thence over U. S. Highways 611 to Scranton. This route is also used on occasion for the movement of southbound freight from Scranton to Philadelphia. A substantial portion of the freight transported between the Pennsylvania points here involved is traffic that originates at Philadelphia and terminates at points within 40 miles of Stroudsburg, or freight which originates at points in the 40-mile area and terminates at Philadelphia. Other traffic handled between these points consists of interline freight which originates at points outside of Pennsylvania and is received from connecting carriers in Philadelphia, or interline traffic which originates at points in the Stroudsburg area and is transferred to connecting carriers at Philadelphia. The interline freight and other freight is transported in the same vehicle. The distance from Hudson's terminal in Philadelphia to its terminal in Scranton over the route via Columbia and Stroudsburg is approximately 160 miles and the

driving time between the terminals is about 5-1/10 hours. The distance from the terminal in Philadelphia to the terminal in Allentown over the route via Phillipsburg is approximately 106 miles and the driving time is about 3-1/2 hours. The distance from the terminal in Philadelphia to the terminal in Scranton via Phillipsburg and Allentown is approximately 184 miles, and the driving time is about 5-1/6 hours. In performing service, in each direction between the Pennsylvania points here involved, Hudson's vehicles are not stopped to pickup or deliver freight at any point in New Jersey. Hudson has several freight solicitors in the Pennsylvania area here involved. Direct service by this carrier between Philadelphia and other Pennsylvania points is advertised in telephone directories, certain tariffs, and other publications, and it distributes a point list purporting to show available service between Philadelphia and over 300 Pennsylvania points including some points which are located beyond the Stroudsburg area. For the 6-month period ending June 30, 1959, Hudson received a gross revenue of about $593,000 from operations performed between all authorized points, including a gross revenue of approximately $51,000 from the northbound traffic transported from Philadelphia to other Pennsylvania points via Trenton.

As pertinent, Arrow holds certificates Nos. MC-71536, MC-71536 (Sub-No. 1), and MC-71536 (Sub-No. 3), hereinafter called the original certificate, Sub-1 and Sub-3, respectively, authorizing the transportation of general commodities, with certain exceptions, between the points and over the regular routes described in appendix A hereto, serving all intermediate points, and the described off-route points. The original certificate was issued to Arrow on December 16, 1942, as a result of operations conducted by

it prior to and after June 1, 1935, the critical "grandfather" date. The operating rights described in Sub-1 were originally granted to Lehigh Valley Motor Express Corporation, hereinafter called Lehigh, on February 10, 1938, in MC-58970, and reported in 6 M.C.C. 89. The operating rights of Lehigh were purchased by Arrow, on November 12, 1938, and the transaction was approved in MC-F-596, reported in 15 M.C.C. 203. Sub-3 certificate was issued to Arrow on May 22, 1957. This operating authority was purchased from Rudolph Freight Lines, and the transaction was approved in MC-F-6356. Arrow has intrastate authority to serve some Pennsylvania points not including Philadelphia or points in the Philadelphia area.

Arrow maintains terminals at Carlstadt and Phillipsburg, N. J., and Allentown, Schuylkill Haven, Shamokin, Williamsport, Hazleton, Scranton, and Philadelphia, Pa. The Philadelphia terminal was established about April 15, 1959. During the period about May 22, 1957, to April 15, 1959, Arrow had a terminal in Camden, N. J. It operates a number of road tractors and trailers, and has local pickup and delivery trucks, and peddle runs operating out of each terminal. Arrow has been tacking its operating authorities at certain points, and providing service daily on truckload traffic and loads of less-than-truckload freight between Philadelphia, on the one hand, and, on the other authorized Pennsylvania points via certain points in New Jersey. The traffic transported by Arrow between the Pennsylvania points here involved includes (1) freight originating at Philadelphia and destined to other Pennsylvania points here involved, (2) freight originating at points in Pennsylvania and destined to Philadelphia, and (3) freight originating at or destined to points outside of Pennsylvania, and received from or delivered to connecting

carriers at Philadelphia. The freight is handled on overnight schedules, and the shipments average about 20,000 pounds each.

For the purpose of clarity of discussion, the routes which are tacked or combined by Arrow for the purpose of performing through service between Philadelphia and other Pennsylvania points are identified in the appendix as (A), and (A-1) in Sub-3, (B), (B-1), (C), (C-1), (D), and (E) in Sub-1, and (E-1), (E-2), (F), (G), and (H) in the original certificate. Since about May 22, 1957, shipments received or picked up at Philadelphia and points within 15 miles thereof including Fort Washington, Pa., and destined to other Pennsylvania points herein involved, have been transported in Arrow's road trucks that operate on regular round-trip runs between Philadelphia and the Allentown terminal. Prior to about April 15, 1959, the outbound freight from Philadelphia was transported over the Tacony-Palmyra Bridge and New Jersey Highway 73 to junction U. S. Highway 130, thence over U. S. Highways 130 and 206 to Trenton under irregular route authority described in (A-1) of Sub-3, thence over New Jersey Highway 69 to junction U. S. Highway 22 at Clinton Corners, N. J., under authority described in (B) of Sub-1, thence over U. S. Highway 22 via Phillipsburg to Easton, Pa., under authority described in (C) of Sub-1, and thence over U. S. Highway 22 to Allentown under authority described in (D) of Sub-1, or (G) of original certificate. The equipment was stopped en route at the Phillipsburg terminal to unload freight destined to the terminal at Scranton, and also to unload freight for local delivery in the Phillipsburg area, including Bangor, Pa. Upon arrival of the truck at the terminal in Allentown, the balance of the load was unloaded and that portion of the freight destined to points

beyond Allentown was picked up and delivered by a truck that operates on a scheduled run from Carlstadt, N. J., to these points via Allentown, under authority described in Sub-1 or the original certificate. For example, the freight destined to Hazleton and off-route points in the Hazleton area, including White Haven, moved in the Carlstadt truck from the Allentown terminal over U. S. Highway 309 and Pennsylvania Highway 29 to the termnial at Hazleton, under authority described in (G) of the original certificate, and the freight destined to White Haven and other off-route points was delivered in a pickup and delivery truck under the off-route authority described in (G) of the original certificate. The freight destined to the terminals at Shamokin, Sunbury and Williamsport, moved in the Carlstadt truck from Allentown, over U. S. Highway 22 to the terminal at Shamokin, thence over U. S. Highway 120 to the terminal at Sunbury, and thence over Pennsylvania Highway 14 to the terminal at Williamsport, under authority described in (F) of the original certificate. The freight shipped to points in the Williamsport area including Muncy, Pa., was delivered from the Williamsport terminal in pickup and delivery trucks under the off-route authority described in (H) of the original certificate. The freight which was shipped from Philadelphia to the Scranton terminal and unloaded at the terminal in Phillipsburg, was picked up at that point by a truck that operated on a regular run from Carlstadt over U. S. Highway 46 to Hackettstown, N. J., thence over New Jersey Highway 24 to Phillipsburg, thence over U. S. Highway 22 to Easton, thence over U. S. Highway 611 via Stroudsburg to the Scranton termnial, and return over the same route. The movement described above from Phillipsburg to Easton was performed under the authority described in (F) or (G) of the original certificate, or (C) of Sub-1. The movement

from Easton to Stroudsburg was performed under authority described in (E-1), and the movement from Stroudsburg to the terminal at Scranton was performed under authority described in (E-2), of the original certificate. The freight which was destined to points in the Wilkes-Barre area, including Swoyersville, and the freight destined to off-route points in the Scranton and Stroudsburg area including East Stroudsburg, Pa., were delivered from the Scranton terminal in pickup and delivery trucks under the authority described in (H) of the original certificate. The truck used on the Philadelphia-Allentown run picked up freight at the Allentown terminal and returned to Philadelphia over above-described routes via Phillipsburg and Trenton, and the vehicle was stopped at the Phillipsburg terminal to pickup freight delivered at that terminal by the Carlstadt truck. The operations performed by Arrow since April 15, 1959, are similar to those performed by it prior to that date in the movement of the traffic here involved, except that the carrier now utilizes U. S. Highway 1 between Trenton and its terminal in Philadelphia under regular route authority described in (A) of Sub-3. Freight shipped, for example, from some points within 15 miles of Philadelphia, including Fort Washington, to Pennsylvania points via New Jersey is handled as far as Trenton under the authority described in (A), or (A-1) of Sub-3 or combination thereof.

The distance from Arrow's terminal in Philadelphia to its terminal in Scranton over above-described route via Trenton, Phillipsburg, Easton and Stroudsburg is about 160 miles, and the average driving time is about 5 1/10 hours in each direction.

The distance from Arrow's terminal in Philadelphia to its terminal in Allentown over above-described route via

Trenton and Phillipsburg is between 105 and 110 miles, and the average driving time is about 3½ hours in each direction. Arrow points out that the carrier's authorities can be tacked at Allentown for the purpose of transporting Scranton freight from Philadelphia over above-described route via Phillipsburg to Allentown, and thence over U. S. Highway 309 and connecting routes to Scranton, under authority described in (A) of Sub-3, and (B), (C), (D) and (E) of Sub-1. The record indicates that the distance over this route from the Philadelphia terminal to the terminal in Scranton is between 181 and 188 miles. Arrow also has the conviction that its authority in (A) of Sub-3, could be combined at Trenton, with the authority described in (B-1) of Sub-1, and the latter could be combined at Morrisville, Pa., with the authority described in (C-1) of Sub-1, for the purpose of providing through service on shipments of freight from Philadelphia to Allentown over a route via Trenton, and Morrisville, Yardley, Newtown, and Buckingham, Pa., approximately 85 miles; however, no shipments have been transported over this route. Morrisville is located about one mile west of Trenton. The speedometer on a car driven by Arrow's representative from its terminal in Philadelphia to the carrier's terminal in Allentown over U. S. Highway 309, the shortest intrastate route, registered about 57 miles. He is also aware that intrastate traffic could be transported by authorized carriers over the Pennsylvania Turnpike from Philadelphia to Allentown and Scranton.

Arrow utilizes telephone directories, newspapers, certain tariffs, and other means to advertise direct service between Philadelphia and other Pennsylvania points. In April 1959, it was transporting only one trailerload of freight a night between these points. At the time of hear-

ing, it was transporting between Philadelphia and Pennsylvania points three or four loads of northbound freight and two or three loads southbound each night. These shipments averaged about 20,000 pounds each.

On brief, complainant contends (1) that the two paragraphs in Hudson's certificates constitute a single grant of irregular-route authority and, consequently, may not lawfully be tacked together for the purpose of providing through service, (2) that in the transportation of traffic between the points here involved, Hudson has converted its irregular-route authority to unauthorized regular-route operations, (3) that by tacking its authority, Hudson is also performing unauthorized cross-haul operations between two or more points in the same radial area it is authorized to serve, (4) that Arrow, by means of its several tacking methods described above, is making double use of single grants of authority, which is not permissible, (5) that subterfuge by Hudson and Arrow is shown (a) by unauthorized tacking practices, (b) by the handling of a substantial volume of intrastate traffic which moves solely between an origin point in Pennsylvania and a destination point in the same State, (c) by advertising direct service on shipments of this traffic (d) by the movement of this traffic on regular runs daily over regular routes via points in New Jersey with no stops at points in that State to pick up or deliver freight, except the stops made by Arrow at its Phillipsburg terminal, (e) by the transportation of this intrastate traffic over interstate routes which are about 100 percent longer than the existing intrastate routes from Philadelphia to Allentown, and somewhat longer than the existing intrastate routes from Philadelphia to Scranton, and (f) by admissions on the part of Hudson and Arrow that if no intrastate authority or interstate authority was

required for the movement of this traffic, these carriers probably would transport the freight over the shorter and more direct intrastate routes, and (6) that tacking is not authorized by the act.

With respect to the contention in (6) above, complainant admits that this argument is perhaps more to be addressed to the Supreme Court than to the Commission, for the reason that the Commission has authorized tacking since the *Keeshin Motor Express Co., Inc. (Ill.)—Lessor*, 1 M.C.C.373 (1936), without specific proof of necessity, and that the lower federal courts have approved such authorization. However, complainant argues that the Federal act was patterned after the State acts which require proof of public convenience and necessity to warrant approval of the tacking of operating authorities, and therefore appears to have also inherently the same restrictions against tacking, and that the facts of record show a need, and provide opportunity for the Commission to reconsider the propriety of the doctrine which has luxuriated out of the *Keeshin* decision, and, at least, to limit use of that doctrine so that the announced intent of the Congress may not be evaded.

Complainant also argues, in effect, that tacking is not properly to be applied literally as between places in the same State if the underlying considerations of the Federal act, the purposes behind tacking, and the Federal-State relationships are to be maintained and promoted: that the evils of tacking are not fanciful or imaginery, that a tacking carrier can choose the cream of traffic in selected areas while the licensed State carriers may be burdened with the movement of less remunerative traffic to their detriment, and that the tacking practices indulged in by the interstate carriers has resulted in a situation where the

State cannot guarantee a quasi-monopoly to its licensed carriers, and the Commission cannot guarantee regulated competition.

Complainant also cites several cases, including *Interstate Common Carrier Council v. U. S.*, 84 F. Supp. 414, 417, 338 U.S. 843, *Michigan Motor Freight Lines v. U. S.*, 113 F. Supp. 812 and 819, in which the Supreme Court upheld the Commission in its refusal to approve motor carrier operations over alternate routes, or to permit the merger and unification of operating rights, for the reasons (1) that the service routes of the carriers which sought alternate-route authority were too circuitous to be regarded as noncompetitive, and (2) that the routes which were proposed to be used by unification of operations were excessively circuitous compared to direct routes between the points proposed to be served. It also points out that in *Creston Transfer Co., Extension—California*, 73 M.C.C. 645, the Commission refused to remove a restriction against tacking, for the reason that the carrier's rights were dependent upon a circuitous mode of tacking. It argues that the same principles of tacking apply in the instant proceedings with equal force and effect.

In their brief, supporting intervenors concur in the contentions and arguments of complainant in respect of intrastate traffic. They also urge that the petitions of Hudson and Arrow be denied for the reason that the issues raised in the petitions can and should be disposed of in the complainant proceedings.

In separate briefs, Hudson and Arrow contend in effect that in the transportation of traffic between the points involved, and in the manner described above, each carrier is employing lawful tacking methods and providing

bona fide operations free of subterfuge, for the reasons (1) that the right to tack operating authorities for the purpose of providing bona fide through service, has been recognized by the Commission in a number of cases including *Aetna Freight Lines, Inc—Interpretation of Certificate*, 48 M.C.C. 610, hereinafter called Aetna case, and (2) that the right to perform bona fide operations in the transportation of traffic between two points in a single State by tacking in another State, is provided for in section 203 (a)(10) of the act, and also that the right to perform this type of operation has also been recognized (a) by the Commission in *Dixie Freight Lines, Inc.—Common Carrier Application*, 24 M.C.C. 780, *Atlantic Freight Lines—Petition for Declaratory Order*, 51 M.C.C. 175, and *Service Storage & Transfer Co., Inc.—Petition for Declaratory Order*, 71 M.C.C. 304, hereinafter called *Dixie* case, *Atlantic* case, and *Service Storage* case, respectively, and (b) by the Supreme Court in the *Service* case and *Jones* case, supra, (3) that in the movement of traffic by each carrier between Philadelphia and other Pennsylvania points via New Jersey, their operations are performed openly and without any concealment, (4) that freight shipped between points in Pennsylvania, and interline freight shipped from points in a number of States to points in Pennsylvania and vice versa, is transported in the same vehicle, (5) that the terminals at Philadelphia, Allentown, and Scranton are also used for the handling of interstate traffic shipped from Pennsylvania points to the carrier's authorized points in New Jersey and New York, and vice versa, (6) that each carrier is a party to the Middle Atlantic Motor Carriers Conference Tariffs, and the rates charged are generally the same as those of the intrastate carriers, (7) that Hudson and Arrow could not transport the traffic here involved over Pennsylvania intrastate routes if they de-

sired, because they are not authorized to use those routes, and (8) that in the movement of the involved traffic each carrier must traverse the only authorized routes available to it, namely, those by way of New Jersey.

They also point out that from Philadelphia to Scranton, the distance and driving time over the intrastate routes and the routes via New Jersey are not substantially different, that the route used by each from Philadelphia to Allentown is identical to the route used by Jones Motor Co., for the movement of traffic between those points, and they contend that in the *Jones* case the U. S. Supreme Court in reversing P.U.C., and the Superior Court of Pennsylvania ruled in effect an operation from Philadelphia to Allentown via Clinton by tacking interstate authorities is not, per se, a subterfuge.

The record indicates that the Supreme Court's ruling in the *Jones* case was a procedural ruling to enable P.U.C., if it believed that Jones' operation was not bona fide interstate but merely a subterfuge to escape its jurisdiction, to avail itself of the remedy Congress has provided in section 204(c) of the act.

With respect to tacking, it is well settled that a motor common carrier may tack its operating authorities for the purpose of performing bona fide through service on shipments of interstate commerce. For example, in the *Aetna* case the Commission, division 5 stated:

> "The right of a motor common carrier to tack separate grants of unrestricted authorities is well settled regardless of whether the authorities involve regular routes, irregular routes, or a combination of both. The only requirements in such instances has been that there must be a point of service common to both op-

erating authorities, the physical operation must be rendered through such common point, and the character of the authorized services (either regular or irregular route) must be preserved."

In *Donald B. Zirbel-Investigation of Operations*, 54 M. C.C. 409, at page 411, hereinafter called the *Zirbel* case, the Commission stated:

"It is axiomatic that only a single grant of irregular-route authority can emendate from one proceeding. It is not uncommon to describe such single or separate grant of irregular-route authority, especially radial authority, in two or more paragraphs or parts in the certificate or permit subsequently issued. The No. MC-471 (Sub-No. 1) certificate now held by respondent is typical of this practice. It necessarily follows that a motor carrier, such as respondent, lawfully may not combine or tack two or more irregular-route services authorized by one grant of authority even though described in separate paragraphs of a single grant certificate, and thus perform an entirely different or more extensive service in the absence of specific authorization for that joinder in the certificate itself."

Complainant relies on the principles enunciated in the *Zirbel* case and adhered to in several other cases to support its contention that Hudson is unlawfully tacking two paragraphs of a single grant certificate in providing service between the points here involved, including cross hauls. The cases cited by complainant are not controlling here, for the reasons that Hudson's authority between Philadelphia and points in Warren County, on the one hand, and, on the other, was obtained by its predecessor in one preceding No. MC-30001 (Sub-No. 1), and Hudson's authority between Philadelphia and points, in Warren County was

obtained by its predecessor in a separate proceeding (No. MC-30001), that the authorities are not restricted against tacking, that the separately granted authorities may be tacked at any point in Warren County for the purpose of performing bona fide through service in the movement of interstate traffic over logical and normal routes, provided the routes are not used to avoid State regulation, and that Hudson has not made double use of a single grant, or combined the separate grants for the purpose of performing cross-hauls between two points in the same authorized radial area.

Arrow may also tack its regular-route authorities in the manner hereinbefore described for the purpose of performing bona fide through service in the movement of interstate traffic over logical and normal routes, provided the routes are not used to avoid State regulation, for reasons that its certificated authorities are not restricted against tacking, that the authority described in separate paragraphs of the carrier's original certificate was intended to enable the carrier to operate over any route or combination of routes from, to, and between authorized points, that the Commission approved the unification of rights in Sub-1 so as to enable Arrow to provide through service, and that the regular-route and irregular-route authority in Sub-3 may be combined so as to enable Arrow to transport traffic to and from points within 15 miles of Philadelphia.

The principal question remaining for determination is whether Hudson or Arrow, or both, in the transportation of traffic moving solely between Pennsylvania points are utilizing authorized routes or gateways in New Jersey as a subterfuge to avoid State regulation, or whether these routes are unduly circuitous or otherwise abnormal for use

in performing bona fide transportation in interstate commerce. Somewhat similar issues have been determined by the Commission in several cases; however, each case must be determined on the facts presented. In the *Service* case, the Commission found that the petitioner was lawfully tacking separate authorities at its headquarters in Bluefield, W. Va., for the purpose of transporting a small volume of traffic between points in Virginia, that petitioner's use of the described routes was not shown to be a subterfuge to avoid State regulation, that the routes employed were not unduly circuitous or impractical but on the contrary were such as might normally be used by any carrier authorized to operate between the involved Virginia points, and that Bluefield was the base of other substantial operations to and from points in Virginia of which the operations challenged were only a small part. In the *Dixie* case, the Commission found that the carrier was performing bona fide interstate operations by tacking irregular route authorities at Opelika, Ala., and performing through service on shipments of traffic from Atlanta, Ga., to Fort Benning, Ga., and that the carrier's use of the route via Oplika, which was about 28 miles less than the direct route, was not shown to be a subterfuge to avoid State regulation. In the *Atlantic* case, the Commission found that the carrier was performing bona fide interstate operations by tacking its regular-route authorities at Baltimore, Md., and transporting freight from Philadelphia to Pittsburgh, Pa., over a route which was about 33 miles longer than the direct route, and that the carriers use of the routes via Baltimore was not shown to be a subterfuge to avoid State regulation.

In several cases, the Commission has denied applications for unification of operating rights where it was

shown that the carriers traffic would be transported between States over unduly circuitous routes and out-of-the-way gateways. For example, in *Baggett Transp. Co.—Purchase—Dean*, 59 M.C.C. 8, the application was denied where it was shown among other things, (1) that the proposed route from Birmingham, Ala., to Atlanta, Ga., was 300 miles compared to a direct route of 167 miles, and (2) that the proposed route from Gadsen, Ala., to Atlanta was 365 miles compared to a direct route of 132 miles. In *Watson Bros. Transp. Co., Inc.—Pur—West Coast Fast Frt.*, 57 M.C.C. 745, the application was denied where it was shown, among other things, that the proposed route from San Francisco, Calif., to Denver, Colo., was about 30 percent longer than the direct route. In *Malone Freight Lines, Inc.—Lease—Safety Transp. Corp.*, 56 M.C.C. 571, the application was denied where it was shown that the proposed services would have been performed over uneconomical and circuitous routes. In *Joseph E. Faltin—Purchase—Clyde B. Gray*, 50 M.C.C. 364, the application was denied where it was shown that approval would, in most instances, sanction operations over routes which were excessively circuitous in comparison to direct routes. In addition, in the *Creston* case the Commission refused to remove a restriction against tacking which involved varying degrees of circuity.

There is no doubt that Hudson and Arrow are lawfully utilizing the routes via New Jersey points in the movement of the interline traffic mentioned above; however, the evidence is convincing that these carriers are using the routes via New Jersey points primarily as a subterfuge to avoid regulation by P.U.C., and that the transportation performed over these routes in the handling of the substantial volume of traffic which moves solely be-

tween the Pennsylvania points here involved, hereinafter called state freight, does not constitute bona fide transportation in interstate commerce. The record indicates that the movement of the state freight is a subterfuge to evade the jurisdiction of P.U.C., for the reasons (1) that the vehicles used by Hudson nightly to transport the state freight and other freight are not stopped to pickup or deliver any traffic at points in New Jersey, (2) that in the transportation of freight between Philadelphia, Allentown and Scranton, Hudson is performing regular-route service nightly, and its certificated authority is limited to irregular-route service, (4) that each carrier advertises direct service, and transports the state freight over circuitous routes, (5) that in the transportation of the state freight, the routes used by each carrier from Philadelphia to Allentown are excessively circuitous, and the routes used by each carrier from Philadelphia to Scranton are somewhat circuitous, compared to the direct intrastate routes which can be utilized more efficiently and economically by existing intrastate carriers in the movement of this traffic from Philadelphia to Allentown and Scranton. All things considered, the examiner concludes that Hudson and Arrow are engaged in unlawful transportation of Pennsylvania intrastate traffic over routes via New Jersey points, in violation of their interstate certificates, and as a subterfuge to avoid regulation by P.U.C., and that each carrier should be ordered to cease and desist from engaging in such unlawful operations.

FINDINGS

In No. MC-C-2671 and No. MC-C-2696, the examiner find (1) that the described operations by defendants between Philadelphia, Pa., and points in Pennsylvania via points in New Jersey in the transportation of property

which originates at a point in Pennsylvania and terminates at a point outside the State, and vice versa, are bona fide operations in interstate or foreign commerce, and authorized in their certificates in No. MC-113933, No. MC-71536, and No. MC-71536 (Sub-Nos. 1, 2, and 3), and (2) that defendants's transportation of property which originates at Philadelphia, Pa., and terminates at other points in Pennsylvania, and vice versa, was and is not authorized in their certificates; that defendants have engaged in the transportation of the traffic described in (2) above without proper authority and in violation of section 206(a)(1) of the Act; and that an order should be entered requiring each defendant to cease and desist, and hereafter to refrain and abstain from all operations of the character found in this report to be unlawful.

In No. MC-113933, No. MC-71536, and No. MC-71536 (Sub-Nos. 1, 2 and 3), the examiner finds that the matters to which the petitions are directed have been disposed of in the findings in No. MC-C-2671 and No. MC-C-2696 above, and that in view of the findings, and the cease and desist order to be entered in the complaint proceedings, the petitions should be denied.

An appropriate order will be entered.

By H. L. Hanback, Hearing Examiner.

(Signature) H. L. Hanback

APPENDIX A

Certificate No. MC-71536

Between New York, N. Y., and points in Pennsylvania, as follows:

(G)—From New York over irregular routes to Paterson, N. J., thence over U. S. Highway 46 to Hackettstown, N. J., thence over New Jersey Highway 24 to Phillipsburg, N. J., thence over U. S. Highway 22 via Easton, Pa., to Allentown, Pa., thence over U. S. Highway 309 to junction Pennsylvania Highway 29 thence over Pennsylvania Highway 29 via Hazleton, Pa., to junction Pennsylvania Highway 93, thence over Pennsylvania Highway 93 to Berwick, Pa., thence over U. S. Highway 11 via Danville, Pa., to Northumberland, Pa.

(F)—From New York as specified above to Allentown, Pa., thence over U. S. Highway 22 to Hamburg, Pa., thence over U. S. Highway 122 to Sunbury, Pa., thence over Pennsylvania Highway 14 to Williamsport, Pa., and thence over U. S. Highway 220 to Lock Haven, Pa.;

From New York as specified above to Danville, Pa., thence over Pennsylvania Highway 54 to Elysburg, Pa., and thence over Pennsylvania Highway 242 to Paxinos, Pa.

(E-2)—From New York as specified above to Hackettstown, N. J., thence over U. S. Highway 46 to Portland, Pa., thence over U. S. Highway 611 to Scranton, Pa., and thence over U. S. Highway 11 to Berwick, Pa.:

From New York as specified above to Scranton, Pa., and thence over U. S. Highway 6 to Carbondale, Pa., and thence over Pennsylvania Highway 70 to Forest City, Pa.

(E-1)—From New York as specified above to Easton, Pa., thence over U. S. Highway 611 to Stroudsburg, Pa., thence over U. S. Highway 209 to junction Pennsylvania Highway 115, and thence over Pennsylvania Highway 115 to Kingston, Pa.;

From New York as specified above to Allentown, Pa., and thence over U. S. Highway 309 to Wilkes-Barre, Pa.;

From New York as specified above to Allentown, Pa., thence over U. S. Highway 309 to junction Pennsylvania Highway 563, thence over Pennsylvania Highway 563 to junction unnumbered highway, thence over unnumbered Highway to Red Hill, Pa., thence over Pennsylvania Highway 29 to Hereford, Pa., thence over Pennsylvania Highway 100 via Pottstown, Pa., to junction Pennsylvania Highway 83, thence over Pennsylvania Highway 83 to junction Pennsylvania Highway 683, and thence over Pennsylvania Highway 683 to Spring City, Pa.;

From New York as specified above to Allentown, Pa., and thence over U. S. Highway 222 to Ephrata, Pa., and

Return over the above-specified regular routes to Paterson, N. J., thence over irregular routes to New York.

(H)—Service is authorized to and from all intermediate points on the above-specified routes, and to and from the off-route points of Boonton, Belvidere, and Oxford, N. J., Nuremberg, Sheppton, Mifflinberg, Middleburg, Bearbortown, White Haven, Perkasie, Stowe, Gilbertville, Topton, Fleetwood, West Reading, Sinking Spring, Denver and Mahton, Pa. those in New Jersey within 35 miles of Columbus Circle, New York,

N. Y., and those within ten miles of each of the following points: Phillipsburg, Allentown, Danville, Forty Fort, Hazleton, Scranton, Shamokin, Stroudsburg, Sunbury, and Williamsport, Pa.

Certificate No. MC-71536 (Sub-No. 1)

(D)—Between Easton, Pa., and Wernersville, Pa.:

From Easton over U. S. Highway 22 to Allentown, Pa., thence over U. S. Highway 222 to Reading, Pa., thence over U. S. Highway 422 to Wernersville, Pa., and return over the same route:

Service is authorized to and from the off-route points of Emmaus, Macungie, Topton, Fleetwood, Hamburg, Hellertown, and Pottstown, Pa.

(E)—Between Allentown, Pa., and Scranton, Pa., as follows:

From Allentown over U. S. Highway 309 via Mauch Chunk, Pa., to Hazleton, Pa. (also from Mauch Chunk over U. S. Highway 209 to Tamaqua, Pa., thence over Pennsylvania Highway 29 to Hazleton), thence over U. S. Highway 309 to Pittston, Pa., and thence over U. S. Highway 11 to Scranton:

From Allentown over U. S. Highway 22 to Bethlehem, Pa., thence over unnumbered highway to Bath, Pa., thence over Pennsylvania Highway 45 to Nazareth, Pa., thence over Pennsylvania Highway 12 to Wind Gap, Pa., thence over Pennsylvania Highway 702 to Bangor, Pa., thence over Pennsylvania Highway 712 to junction U. S. Highway 611, and thence over U. S. Highway 611 to Scranton; and

Return over these routes to Allentown.

Service is authorized to and from the off-route points of Summithill, Mt. Carmel, Pottsville, Schuylkill Haven, Orwigsburg, Ashland, Shenandoah, Girardville, Frackville, Port Carbon, Mahoney City, Duryea, Olyphant, Taylor, Luzerne, Old Forge, Plymouth, Kingston, West Pittston, Freeland, Centralia, St. Clair, New Philadelphia, and Throop, Pa.

(C-1)—Between Allentown, Pa., and Morrisville, Pa., as follows:

From Allentown over U. S. Highway 309 to Quakertown, Pa., thence over Pennsylvania Highway 313 to junction Pennsylvania Highway 113, thence over Pennsylvania Highway 113 to Doylestown, Pa., thence over U. S. Highway 202 to New Hope, Pa., and thence over Pennsylvania Highway 32 to Morrisville:

From Allentown over U. S. Highway 309 to Sellersville, Pa., thence over Pennsylvania Highway 813 via Telford, Pa., to junction Pennsylvania Highway 63, thence over Pennsylvania Highway 63 via Hatfield, and Lansdale, Pa., to junction U. S. Highway 202, thence over U. S. Highway 202 to Buckingham, Pa., thence over Pennsylvania Highway 113 to Newtown, Pa., thence over Pennsylvania Highway 532 to Yardley, Pa., and thence over Pennsylvania Highway 32 to Morrisville: and

Return over these routes to Allentown.

Service is authorized to and from the off-route point of Silverdale, Pa.

Between Pennsylvania points and points in New Jersey as follows:

From Easton, Pa., over unnumbered highways via Phillipsburg, Alpha, Warren Glen and Spring Mills, N. J., to Milford, N. J.

From Portland, Pa., across the Delaware River to junction New Jersey Highway 8, thence over New Jersey Highway 8 to Columbia, N. J.;

From New Hope, Pa., over U. S. Highway 202 to Lambertville, N. J., thence over unnumbered highway via Titusville, N. J., to Trenton, N. J.

(B-1)—From Morrisville, Pa., over U. S. Highway 1 to Trenton, N. J., thence over numbered highway via Titusville, N. J., to Lambertville, N. J.

(C)—From Easton, Pa., over U. S. Highway 22 via Phillipsburg, Clinton, and Clinton Corners, N. J., to Plainfield, N. J.;

From Easton across the Delaware River to junction New Jersey Highway 24, thence over New Jersey Highway 24 to junction New Jersey Highway S24, thence over New Jersey Highway S24 to Hackettstown, N. J., and thence over U. S. Highway 46 to Netcong, N. J.; and

Return over these routes to the above-specified Pennsylvania origin points.

(B)—Between Clinton, N. J., and Trenton, N. J.:

From Clinton over U. S. Highway 22 to junction New Jersey Highway 69, thence over New Jersey Highway 69 to Trenton, and return over the same route.

Between Scranton, Pa., and Endicott, N. Y.:

From Scranton over U. S. Highway 11 to Binghamton, N. Y., thence over New York Highway 17C to Endicott, and return over the same route.

Service is authorized to and from all intermediate points on the above-specified routes.

Certificate No. MC-71536 (Sub-No. 3)

Regular Route:

(A)—*General commodities,* except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment,

Between Philadelphia, Pa., and New York, N. Y., serving all intermediate points:

From Philadelphia over U. S. Highway 1 to Newark, N. J., and thence over city streets and connecting highways to New York, and return over the same route.

Irregular Routes:

(A-1)—General commodities, except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment,

Between Philadelphia, Pa., on the one hand, and on the other, points within 15 miles of Philadelphia, Pa.

Recommended by H. L. Hanback,
Hearing Examiner
(Signature) H. L. Hanback

ORDER

At a Session of the Interstate Commerce Commission, Division 1, held at its office in Washington, D. C., on the day of A. D. 1960.

No. MC-C-2671

Pennsylvania Public Utility Commission

v.

Hudson Transportation Company

No. MC-C-2696

Pennsylvania Public Utility Commission

v.

Arrow Carrier Corporation

No. MC-113933

Hudson Transportation Company—
Petition for Declaratory Order

No. MC-71536

Arrow Carrier Corporation—
Petition for Declaratory Order

No. MC-71536 (Sub-No. 1)

Arrow Carrier Corporation—
Petition for Declaratory Order

No. MC-71536 (Sub-No. 2)

Arrow Carrier Corporation—
Petition for Declaratory Order

No. MC-71536 (Sub-No. 3)

Arrow Carrier Corporation—
Petition for Declaratory Order

Investigation of the matters and things involved in these proceedings having been made, said complaints and petitions upon due notice having been heard by the exam-

iner who has made and filed a report herein containing his findings of fact and conclusions thereon, which report is hereby made a part hereof, and said proceedings having been duly submitted:

It is ordered, That defendants in No. MC-C-2671, and No. MC-C-2696 be, and they are hereby, notified and required within 30 days from the date this order becomes effective pursuant to the provisions of Section 17(5) of the Interstate Commerce Act, to cease and desist, and thereafter to refrain and abstain from the performance of transportation of the character found in said report to be unlawful.

It is further ordered, That the said petitions in Nos. MC-113933, MC-71536, and MC-71536 (Sub-Nos. 1, 2 and 3) be, and they are hereby, denied.

And it is further ordered, That this order shall become effective on

By the Commission, division 1.

Harold D. McCoy,
Secretary

(Seal)

APPENDIX B

INTERSTATE COMMERCE COMMISSION

No. MC-C-2671 [1]

PENNSYLVANIA PUBLIC UTILITY COMMISSION

v.

HUDSON TRANSPORTATION COMPANY

Decided November 30, 1960

1. In Nos. MC-C-2671 and MC-C-2696, defendants found to be performing both authorized transportation and transportation of intrastate freight between points in Pennsylvania through points in New Jersey. Complaints dismissed.

2. In Nos. MC-113933, MC-71536, and MC-71536 (Sub-Nos. 1, 2 and 3), petitioners found to be performing both authorized transportation and transportation of intrastate freight between points in Pennsylvania through points in New Jersey. Petitions granted in part.

William A. Goichman for complainant in No. MC-C-2671 and No. MC-C-2696, and intervener in opposition to

[1] This report also embraces No. MC-C-2696, Pennsylvania Public Utility Commission v. Arrow Carrier Corporation; No. MC-113933, Hudson Transportation Company—Petition for Declaratory Order; and Nos. MC-71536, MC-71536 (Sub-Nos. 1, 2 and 3), Arrow Carrier Corporation—Petition for Declaratory Order.

the petitioners in Nos. MC-113933, and MC-71536 and MC-71536 (Sub-Nos. 1, 2 and 3).

Richard V. Zug and *August W. Heckman* for petitioner in No. MC-113933, and defendant in No. MC-C-2671.

Christian V. Graf, Spencer R. Liverant and *Robert J. Stewart* for petitioner in No. MC-71536 and No. MC-71536 (Sub-Nos. 1, 2 and 3), and intervener in support of petitioner in No. MC-113933.

Edwin A. Gehring for intervener in support of petitioner in No. MC-113933, and in opposition to other petitioner.

Paul F. Barnes for interveners in support of complainants and in opposition to the petitioners.

Ernie Adamson for intervener in support of defendants.

REPORT OF THE COMMISSION

DIVISION 1, COMMISSIONERS MURPHY, GOFF AND HERRING

BY DIVISION 1:

These proceedings involve related issues, were heard on a consolidated record, were the subject of a single report and recommended order by the examiner, and will be disposed of here in one report. Our conclusions differ in part from those recommended. Separate exceptions to the order recommended by the examiner were filed by Hudson Transportation Company, hereinafter sometimes called Hudson, and by Arrow Carrier Corporation, hereinafter sometimes called Arrow. Replies were filed in all of the proceedings by the Pennsylvania Public Utility Commission, hereinafter sometimes called P.U.C., and by Highway

Express Lines, Inc., Rodgers Motor Lines, Inc., Fowler and Williams, Inc., and Modern Transfer Co., Inc., hereinafter called Highway Express, Rodgers, Fowler, and Modern, respectively.

In No. MC-C-2671, by complaint filed August 24, 1959, and in No. MC-C-2696, by complaint filed October 8, 1959, P.U.C. alleges in essence, that Hudson and Arrow, respectively, (1) are motor carriers holding certain authorities issued by the Interstate Commerce Commission, and, as such, are subject to the provisions of the Interstate Commerce Act, and (2) have transported property by motor vehicle between certain points in the State of Pennsylvania, over routes through points in the State of New Jersey, without first having obtained appropriate certificates of public convenience and necessity from the Interstate Commerce Commission, as required by sections 203(c) and 206(1) of the Interstate Commerce Act, or having obtained a certificate from P.U.C., as required by sections 202(b) and 202(c) of the Public Utility Law of Pennsylvania. Complainant prays that the Commission issue an order requiring each defendant to cease and desist from the alleged violations. Answers to the complainants were filed by defendants in the respective proceedings.

By petition dated October 23, 1958, in No. MC-113933, and by petition filed August 31, 1959, in Nos. MC-71536 and MC-71536 (Sub-Nos. 1, 2 and 3), Hudson and Arrow, respectively, request orders interpreting their outstanding certificates, or, in the alternative, request that the Commission enter declaratory orders finding as to each petitioner (1) that its certificates do not limit it to the transportation of shipments moving between points in Pennsylvania, on the one hand, and, on the other, points in other (specified) States, and (2) that under its certifi-

cates it may conduct interstate operations between points in Pennsylvania through a New Jersey gateway pursuant to the authority described in its certificates and may interchange or interline shipments moving from or to points in Pennsylvania beyond the territorial scope of its authorities with connecting interstate carriers, so long as it actually moves such traffic through New Jersey.

Motor Freight Express, hereinafter called Motor Freight, was permitted to intervene in support of the complaint in No. MC-C-2696, and in opposition to both petitions; Fowler, Modern, Rodgers, and Highway Express were permitted to intervene in support of both complaints and in opposition to both petitions; Arrow and Hudson were permitted to intervene in support of each other's petition; P.U.C., was permitted to intervene in opposition to both petitions; and the W. J. Dillner Transfer Company was permitted to intervene as its interests may appear.[2]

The facts here are not materially in dispute. The complaint in the title proceeding alleges, and Hudson admits, that from January 10, 1958, to August 29, 1958, approximately 59 shipments were transported by Hudson from Philadelphia, Pa., to points in Pennsylvania within 40 miles of Stroudsburg, Pa., including Scranton and Allentown, Pa., and one shipment each from Scranton, Wilkes-Barre, West Pittston, West Wyoming, and Kingston, Pa., to Philadelphia. All of these shipments moved to some extent over highways in New Jersey. Hudson also transported five shipments from and to Philadelphia and Scranton through points in New Jersey. As an example, one of

[2] The W. J. Dillner Transfer Company subsequently adopted by letter the position taken in the separate exceptions of Arrow and Hudson.

these shipments moved from Philadelphia over the Tacony-Palmyra Bridge and New Jersey Highway 73 to junction U. S. Highway 130, thence over U. S. Highways 130 and 206 to Trenton, N. J., thence over U. S. Highway 69 to junction U. S. Highway 46, thence over U. S. Highway 46 to junction U. S. Highway 611, and thence over U. S. Highway 611 to Hudson's terminal in Scranton. On the above route, comprising a distance of 160 miles, no stops were made to pick up or deliver freight, and the driving time was 5 hours and 10 minutes. By a slightly different routing used by Hudson for some of the other challenged hauls, its equipment moved from Philadelphia through New Jersey points to Allentown, a distance of 106 miles, and thence to Scranton, for a total mileage of 185. Similarly, no stops were made en route for pickup or delivery of freight.

The complaint in No. MC-C-2696 alleges, and Arrow admits, that from July 31, 1958, to August 23, 1958, defendant therein transported a total of 10 shipments from Scranton, Bangor, Allentown, Shamokin, Wilkes-Barre, and Swoyersville, Pa., to Philadelphia, and a total of seven shipments from the latter point to Catasauqua, Muncy, Shamokin, White Haven, and Scranton, Pa. All of the above shipments moved to some extent over routes in New Jersey. The distance between Arrow's terminals in Philadelphia and Allentown, over U. S. Highway 309 in Pennsylvania, is 52.4 miles and requires approximately 1 hour and 50 minutes driving time, while the distance between the same terminals, over the Pennsylvania Turnpike Extension, is 71 miles, requiring approximately 2 hours driving time.

Modern holds P.U.C. intrastate authority to transport general freight between Philadelphia and Allentown over U. S. 309, which it avers to be the shortest and most direct

route between those points. The time required to cover the above-described route, clocking 52 miles, is said to be approximately 2 hours.

Highway Express holds Pennsylvania intrastate authority between Philadelphia and Scranton. It transports general freight from Philadelphia over unspecified routes to King of Prussia, Pa., thence over U. S. Highway 202 to junction U. S. Highway 309, thence over U. S. Highway 309 to Central Valley, Pa., thence over Pennsylvania Highway 12 to Bethlehem, Pa., thence over Pennsylvania Highways 512 and 12 to Bartonsville, Pa., and thence over U. S. Highway 611 to Scranton. This route is approximately 130 miles, requiring about 4 hours and 20 minutes driving time, and is alleged by Highway Express to be the most direct and shortest route between Philadelphia and Scranton.

Hudson, of Jersey City, N. J., is a motor common carrier holding authority from this Commission in No. MC-113933. This certificate embodies authority purchased from one Joseph Kowaski, who held No. MC-105946, which, in turn, encompassed two certificates purchased by him. As here pertinent, the first of these two certificates purchased by Kowaski authorized the transportation of general commodities, with exceptions, over irregular routes, between Stroudsburg, Pa., and points within 40 miles thereof, on the one hand, and, on the other, New York, N. Y., and points in Bergen, Essex, Hudson, Middlesex, Morris, Passaic, Somerset, Sussex, Union, and Warren Counties, N. J. The second certificate superseded by No. MC-105946 authorized the transportation of general commodities, with exceptions, over irregular routes, between Philadelphia, on the one hand, and, on the other, points in Warren, Sussex, Morris, and Somerset Counties, N. J. The above-described authority appears in two separate paragraphs in No. MC-

113933, and has been tacked at points in Warren County since October 1956 to provide a basis for Hudson's nightly service between Philadelphia, on the one hand, and, on the other, points in Pennsylvania within 40 miles of Stroudsburg. The routes traveled by Hudson in the performance of such service are: from Philadelphia across the Tacony-Palmyra Bridge and over New Jersey Highway 73 to junction U. S. Highway 130, thence over U. S. Highway 130 to junction U. S. Highway 206, thence over U. S. Highway 206 to Trenton, thence over New Jersey Highway 69; thence (1) to junction U. S. Highway 46, thence over U. S. Highway 46 to junction U. S. Highway 611, and thence over U. S. Highway 611, through Stroudsburg, to Scranton, or (2) to junction U. S. Highway 22 at Clinton Corners, N. J., and thence over U. S. Highway 22 through Phillipsburg, N. J., to Allentown, or (3) the same as (2), thence from Allentown over Pennsylvania Highways 987, 512, and 12 to Bartonsville, Pa., and thence over U. S. Highway 611 to Scranton, and return over the same routes. Over the routes described in (1) and (2) above the distance between Hudson's terminals in Philadelphia and those in Scranton and Allentown is approximately 160 and 106 miles, respectively, and the related required driving time is 5.1 and 3.5 hours, respectively. Traffic routed between Philadelphia and Scranton by (3) in combination with (2) above traverses approximately 184 miles and requires about 5.1 hours driving time. For the first six months of 1959 Hudson received gross revenue from all operations of $593,000. This revenue includes approximately $51,000 realized from traffic transported from Philadelphia to other Pennsylvania points over routes in New Jersey. Hudson's vehicles performing the challenged operations carry both freight originating and terminating at Pennsylvania points and freight which is interchanged

with other carriers for through transportation from, to, or between points without Pennsylvania. Driver's logs are kept, and compliance with the Commission's safety regulations made, on all such movements. The subject traffic is solicited by Hudson freight agents in Pennsylvania and by telephone directory advertisements noting "direct" service by Hudson between Philadelphia and other Pennsylvania points. Similarly, Hudson alleges direct service in certain tariff and other publications. Hudson's vice-president states that in the absence of any regulation whatsoever, Hudson would utilize the more direct Pennsylvania Turnpike Extension between Philadelphia and Scranton rather than the routes described above.

Arrow, of Carlstadt, N. J., is a motor common carrier authorized to transport general commodities, with exceptions. As here pertinent it holds authority in No. MC-71536, issued in 1942 in a proceeding arising under the 1935 "grandfather" provisions, and Nos. MC-71536 (Sub-No. 1), and MC-71536 (Sub-No. 3), which it acquired by purchase. They are hereinafter called the original certificate, Sub-No. 1, and Sub-No. 3, respectively, and are more fully set forth in the appendix hereto. It also holds Pennsylvania intrastate authority and No. MC-71536 (Sub-No. 2), which are not involved here. By tacking segments of the original, Sub-No. 1, and Sub-No. 3 certificates, Arrow has performed the challenged transportation, and, for clarity of discussion, the pertinent segments so joined have been alphabetically and numerically designated by precedent brackets in the appendix. Since May 1957 Arrow has been performing a daily round trip service on freight originating, terminating, or interchanged at Philadelphia by routing its vehicles over the Tacony-Palmyra Bridge and over New Jersey Highway 73 to junction U. S. High-

way 130, thence over U. S. Highways 130 and 206 to Trenton under irregular route authority described in (A-1) of Sub-No. 3, thence over New Jersey Highway 69 to junction U. S. Highway 22 at Clinton Corners under regular route authority described in (B) of Sub-No. 1, thence over U. S. Highway 22 through Phillipsburg to Easton, Pa., under regular route authority described in (C) of Sub-No. 1, and thence over U. S. Highway 22 to Allentown under regular route authority described in (D) of Sub-No. 1 or (G) of the original certificate. A stop is made at Phillipsburg to unload freight terminating at local points, including Bangor, Pa. Freight destined to points beyond Allentown proceeds in an Arrow vehicle making a scheduled trip from Carlstadt, N. J., to points in Pennsylvania either under regular route authority described in the original or in the Sub-No. 1 certificate. If, for instance, it wishes to continue to Scranton, the distance from Philadelphia thereto would be about 160 miles. Since April 1959, U. S. Highway 1 has been utilized by Arrow between Philadelphia and Trenton under regular route authority described in (A) of Sub-No. 3. The distance between Arrow's Philadelphia and Allentown terminals over the routes described above is approximately 110 miles and requires about 3.5 hours driving time. The distance between the same two points over U. S. Highway 309 is approximately 57 miles. Arrow points out that it is also able to continue over an alternate route from Allentown to Scranton by tacking other segments of its authority at Allentown. The highway distance thus traveled between Philadelphia and Scranton is approximately 185 miles. As of October 1959, Arrow was moving the considered freight at a frequency of four northbound, and two or three southbound, 20,000 pound loads a night. Arrow maintains terminals at Carlstadt and Phillipsburg, N. J., and Allentown, Schuylkill Haven,

Shamokin, Williamsport, Scranton, and Hazleton, Pa., all of which points are involved in the challenged service. It solicits the subject traffic and holds out "direct" service therefor in notices appearing in telephone directories, newspapers, and certain tariff publications. Arrow's president stated that absent all regulation of transportation, that carrier probably would utilize the more direct Pennsylvania Turnpike Extension between Philadelphia and Scranton rather than the routes described above.

EXCEPTIONS AND REPLIES

The examiner found the challenged tacking of authority by Hudson and by Arrow to be lawful, but that the use of such tacked routes by defendants to transport freight moving solely between Pennsylvania points is a subterfuge to avoid the jurisdiction of, and resulting regulation by, P.U.C., and is therefore unlawful. He recommended, in the complaint proceeding, that the defendants be ordered to cease and desist from such transportation; and, in the other proceedings, that the petitions filed by Hudson and Arrow seeking a contrary interpretation of their certificates, or other relief, be denied.

In separately filed exceptions, Hudson and Arrow, collectively, urge the dismissal of the complaints and the issuance of the declaratory orders requested in their petition proceedings. Hudson contends that the examiner's recommended order is void due to his alleged failure to support his conclusions by reference to specific facts, citing *United States v. B. & O. Ry. Co.*, 293 U.S. 454; and that it may lawfully tack its authority at a point without Pennsylvania to perform service between points in Pennsylvania, citing, among other cases, *Atlantic Freight Lines, Inc.—Petition for Declaratory Order*, 51 M.C.C. 175; *Service,*

Storage & Transfer Co., Inc.—Petition for Declaratory Order, 71 M.C.C. 304, and claiming substantive affirmation thereof in *Service, Storage & Transfer Co. v. Commonwealth of Virginia*, 359 U.S. 171, hereinafter sometimes called the *Service Petition* and *Service* case, respectively; and *Jones Motor Company, Inc. v. Pennsylvania Public Utility Commission*, 361 U.S. 11, 361 U.S. 904. Arrow, in its exceptions, argues (a) that since its above-noted advertisements of "direct" service mean, in transportation parlance, single-line service, the examiner improperly inferred a subterfuge solely from the "circuitous" mileage traversed by Arrow in performing the complained-of transportation between Pennsylvania points; (b) that the examiner incorrectly considered the Supreme Court's action in the *Service* case, *supra*, as being a reversal of the lower court upon procedural grounds, pointing out (1) that the decision appealed from therein was penal in nature, and (2) that the Court, in discussing the proceeding on its merits, commented upon the absence of direct evidence of bad faith on the part of the defendant; (c) that, contrary to the examiner's findings, the proceedings in the *Jones* case, *supra*, may be viewed as approval of the lawfulness of Arrow's challenged activities; (d) that the cases[3] relied upon by the examiner to support his conclusion that the circuitous routes employed by Arrow between the involved Pennsylvania points are a subterfuge to the jurisdiction of P.U.C. are proceedings wherein additional authority was sought to be combined with existing authority, and may thereby be distinguished from the instant

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[3] *Baggett Transp. Co.—Purchase—Dean*, 59 M.C.C. 8; *Watson Bros. Transp. Co., Inc.—Pur.—West Coast Fast Freight*, 57 M.C.C. 745; and *Malone Freight Lines, Inc.—Lease—Safety Transp. Corporation*, 56 M.C.C. 571

proceeding; and (c) that its challenged tacking is in all respects lawful under the doctrine set forth in *Aetna Freight Lines, Inc., Interpretation of Certificate*, 48 M.C.C. 610, and other cases.

In reply to Hudson's exceptions, P.U.C. contends that the examiner's recommendation and finding of subterfuge is amply supported by specific findings of fact; is not adverse to the *Service* case, *supra;* and, accordingly, should be sustained. In reply to Arrow's exceptions, P.U.C. argues to the same effect, and, in addition, emphasizes that the Supreme Court, in the *Service* case, acted upon jurisdictional grounds, and the Court's discussion of the facts involved was by way of *obiter dicta*; that if a carrier's use of its authorized route should be other than a logical and normal operation; it would be in bad faith, citing the *Service Petition, supra*, and *Eicholz v. P.S.C. of Mo.*, 306 U.S. 268, and that this test supports the examiner's findings; that the "industrious solicitation" of intrastate traffic and the volume thereof transported are factors to properly be considered in a proceeding of this nature; and that the Commission has consistently refused to sanction the tacking of authority which would result in circuitous routes. In their joint reply to both exceptions, Fowler, Rodgers, Highway Express, and Modern adopt and supplement both replies of P.U.C. They point out that the *Jones* case, *supra*, was reversed by the Supreme Court, Per Curiam, solely on the authority of the *Service* case, and assert that affirmation was thereby given to the procedural reversal of the latter proceeding. These replicants further aver that the petitions of both Hudson and Arrow must be denied on the strength of the language in the *Atlantic Freight Petition, supra*,[4] to the effect that

[4] Cited by Hudson on exceptions.

such petitions are not within the scope of the relief afforded under section 5(d) of the Administrative Procedure Act; that the Interstate Commerce Commission should decline to render an informal opinion on the questions involved; and that an informal opinion such as that expressed in the above-cited *Atlantic Freight Petition* is entitled to no weight here.

The evidence adduced, the examiner's recommendation, the exceptions, and the replies thereto have been considered. We find the examiner's statement of fact to be adequate for determination of the issues involved; and, as hereinabove supplemented, adopt it as our own. We have considered Hudson's allegation that the conclusions expressed in the examiner's report were unsubstantiated by proper factual reference and, without reproducing the report or the factual references here, find such contention to be without merit.

DISCUSSION AND CONCLUSIONS

Consideration of the *Service* and *Jones* cases, *supra*, is essential to the disposition of the matters before us. In the *Service* case, the Virginia Court of Appeals modified a fine imposed by the Virginia State Corporation Commission upon defendant Service Storage & Transfer & Storage Co., a motor common carrier holding authority from the Interstate Commerce Commission, but no authority from Virginia. In brief, defendant therein had been transporting freight between certain Virginia points through the gateway of Bluefield, W. Va., by tacking, at the latter point, certain authority issued by this Commission. These activities were alleged by Virginia to have been of an intrastate character and, therefore, in violation of the Code of Virginia. The Supreme Court reviewed the facts, not-

ing that the certificate containing the tacked authority encompassed both defendant's original certificate and one subsequently purchased by it; that defendant's headquarters was in Bluefield; that the challenged traffic was used to fill out less-than-truckload shipments and constituted three percent of defendant's total traffic; and that there was no evidence of bad faith on the part of defendant. The Court concluded its factual recitation by stating that defendant's "certificate on its face covers the whole operation". It reversed the Virginia Court of Appeals, stating:[5]

> . . . It appears clear that interpretations of Federal certificates of this character should be made in the first instance by the authority issuing the certificate . . . Compare Atlantic Freight Lines, Inc. v. Pennsylvania Public Utility Commission, 163 Pa. Super. 215, 60 A. 2d 589, with Atlantic Freight Lines, Inc.—Petition for Declaratory Order, 51 M.C.C. 175[6] . . . The wisdom of such a practice is highlighted by the facts of this case[7] . . . . Such conflicts can best be avoided if the interpretation of I.C.C. certificates is left to the Interstate Commerce Commission. . . .

The Court then distinguished the *Eicholz* case, *supra*, as one wherein the defendant carrier crossed a State line for

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[5] 359 U.S. at 177.

[6] These proceedings presented the same facts, but resulted in opposite conclusions.

[7] Between the close of the hearing before the Virginia State Corporation Commission and the announcement by that body of its decision therein, defendant petitioned this Commission for a declaratory order interpreting its certificate. The Commonwealth of Virginia and this Commission ultimately reached opposite conclusions as to the transportation that could be performed under that certificate.

the sole purpose of creating an interstate operation, and one wherein a State took punitive action in circumstances where the carrier had not submitted its operations to the regulation of the Interstate Commerce Commission at the time of the alleged violations. The Court continued:[8]

> . . . Finally, the Commonwealth is not helpless to act . . . it can avail itself of the remedy Congress has provided in the [Interstate Commerce] Act. . . .

Clearly, the Court intended its opinion to have the effect of placing before this Commission, as the primary forum, those questions arising under our certificates. In our opinion, the Court's factual discussion is intended to show that the challenged operation was, on its face, within the scope of the interstate certificate, and thus determination of the validity of the operation in question was within our jurisdiction. We are satisfied that no other issue but that of jurisdiction was dealt with by the court in the *Service* case. Accordingly, we do not regard it as a decision on the merits of the issues under consideration here. It follows, then, that the *Jones* case, *supra*, involving an operation comparable to those complained of in the *Service* case, and reversed, Per Curiam, by the Supreme Court on the strength of the *Service* case, is similarly of jurisdictional import.

Hudson, which holds irregular route authority, has been using consistently a fixed route, as described above, in the performance of the considered transportation, and there is a marked regularity in the service thus provided between certain fixed termini. Although the record is not sufficiently illuminative as to other criteria described in *Transportation Activities, Brady Transfer & Storage Co.*,

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[8] 359 U.S. at 179.

47 M.C.C. 23, for us to determine whether Hudson is conducting a regular-route service under its irregular-route authority, we herein admonish Hudson of the necessity of maintaining the distinction between regular- and irregular-route service as set forth in the *Brady* case.

We are in agreement with the examiner that the joinder by Hudson and Arrow, respectively, of the authority resulting in the subject operations does not, in and of itself, appear to violate any established principles with respect to tacking. Defendants urge that once having reached this conclusion, we need look no further to find, on the strength of the *Aetna* case, *supra*, that the operations thus performed are, in all respects, proper. Although the latter proceeding provides a basic rule under which the permissiveness of tacking may be judged, its doctrine by no means contemplates a determination of all of the issues under consideration here, nor precludes a finding that authority may, when properly joined, be used to achieve an end not contemplated by the issuance of our certificates. The principal question presented here is whether Hudson and Arrow may each, under its certificates issued by us, perform transportation from and to points in Pennsylvania by tacking at a point, or points, outside Pennsylvania.

While section 203(a)(10) of the act defines as being in interstate commerce, commerce between points in the same State through another State, section 202(b) of the act emphasizes that the right to regulate *intrastate* commerce on its own highways remains in the States. The *Eicholz* case, *supra*, made it clear that an attempted subterfuge to evade the jurisdiction of a State to regulate intrastate commerce might be inferred from a carrier's unreasonable interstate routing. Later, in the *Atlantic*

Freight Petition, supra, former division 5 said, in informally discussing an interstate operation conducted pursuant to our certificate, which certificate specified a route between points in Pennsylvania through Baltimore, Md., that the fact that such route contemplates no subterfuge to evade State jurisdiction, but is bona fide interstate commerce, is a condition precedent to the issuance of the certificate, and that the certificate therefore cannot be collaterally attacked.[9] It is true that the respective rights tacked by defendants in the performance of the operations challenged here were issued by this Commission. And, as pointed out in the *Atlantic Freight Petition,* our certificates authorize operation in interstate commerce. But that is not to say that all transportation performed pursuant to the technicalities appurtenant to such certificates is *ipso facto,* interstate transportation. It is obviously possible for authority to be conceived for the transportation of bona fide interstate traffic and thereafter abortively to be used to render service on intrastate traffic.

We need not dwell long on the particular facts here to conclude that, on the strength of precedents too voluminous to cite, transportation, by carriers under operating rights issued by this Commission, of that freight which is in continuous movement from, or to, points beyond Pennsylvania, regardless of the manner in which it is routed between the Pennsylvania points, can in no way impinge upon the State's regulatory power which is protested by section 202(b) of the act.

That the concept of interstate commerce embraces a movement between points in one State through another State is undisputed. But transportation performed in

[9] 51 M.C.C. 190.

such an operation must not be in bad faith to escape the proper jurisdiction of the terminal State. See, for example, *Eicholz, supra.*[10] This Commission, in an application proceeding wherein the applicant sought authority between points in Kansas through streets in Missouri, issued a certificate after finding the proposed route to be *necessary* to proper service. *Morse Common Carrier Application*, 22 M.C.C. 169. See also, *Eastern Carrier Corp., Common Carrier Application*, 14 M.C.C. 430. No indication appears that the proposed operation in *Morse* was in bad faith to escape the jurisdiction of Kansas. In the *Eastern Carrier* case, however, a portion of the "grandfather" authority sought was denied upon evidence that the operations upon which it was predicated involved deliberate routing of traffic through a second State in order to evade the jurisdiction of Pennsylvania. Compare *Cornell Steamboat Company v. United States*, 321 U.S. 634. Similarly, the *Atlantic Freight Petition, supra*, the *Service Storage Petition, supra*, and *Dixie Freight Lines, Inc., Common Carrier Application*, 24 M.C.C. 780, cited by both Hudson and Arrow in support of the bona fides of their respective operations, can be distinguished from the instant proceeding in that they did not find "bad faith" interstate operations.

Circuitous routing, between points in a State through another State, in and of itself, is not conclusive evidence

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[10] If appellant's hauling of the merchandise in question across the state line was not in good faith but was a mere subterfuge to evade the State's requirement as to intrastate commerce, there is no ground for saying that the prohibition of the use of the interstate permit to cover such transaction, and the application of the (Missouri) Commission's rule prohibiting them in the absence of an intrastate certificate, was an unwarrantable intrusion into the Federal field . . . 306 U.S. at 274.

of a "bad faith" interstate operation. But other factors may exist which, when coupled with circuity, warrant a different conclusion. In the proceedings before us the interstate routes utilized by Hudson and Arrow are longer, between the various concerned Pennsylvania points, than are existing all-Pennsylvania routes which are normally used by intrastate carriers. Transporting traffic over the interstate routes, therefore, involves circuitous routing. Here for example, the distance between Arrow's Philadelphia terminal and its Allentown terminal, over its interstate route hereinabove described, is approximately 110 miles. The comparable distance over more direct routes entirely in Pennsylvania, between Philadelphia and Allentown, is approximately 52 miles. Officers of both Hudson and Arrow admit that, absent any regulation of the challenged transportation, shorter or more geographically direct routes would be employed by each in transporting freight from Philadelphia to, for example, Scranton.

No logical reason appears for the present routing of the intrastate freight other than the fact that defendants are without intrastate authority to ransport it; and from the record, it fairly appears that the only reason for such routing is so that Hudson and Arrow may participate in intrastate traffic purportedly under rights arising from certificates issued by this Commission. All things considered, we are convinced that both Hudson and Arrow have, in their respective operations hereinabove described, by which they have transported freight moving between Pennsylvania points without a prior or subsequent interstate movement, attempted in bad faith to convert, to interstate traffic, traffic which, but for their routing, is actually in intrastate commerce subject to the laws of Pennsylvania.

We do not believe, however, that an order directed against such intrastate transportation would be appropriate in these proceedings inasmuch as we have no jurisdiction over intrastate commerce, and the physical operations involved, as actually conducted, violate no provision of the Interstate Commerce Act.

In Nos. MC-113933, MC-71536, and MC-71536 (Sub-Nos. 1, 2 and 3), we find that the considered operations by petitioners between the Pennsylvania points involved through points in New Jersey in the transportation of property both originating and terminating at points within Pennsylvania, are, but for their routing, actually in intrastate commerce; and that the petitions in these proceedings, to the extent that they seek an interpretation or order to the contrary, should be denied.

In Nos. MC-C-2671 and MC-C-2696, we find (1) that the challenged operations by the respective defendants between points in Pennsylvania through points in New Jersey in the transportation of property originating or terminating at points without Pennsylvania is authorized by their certificates; and that these complaints, to the extent that they embrace such activities, should be dismissed, and (2) that the challenged operations by defendants between the points in Pennsylvania involved, through points in New Jersey, in the transportation of property both originating and terminating at points within Pennsylvania are, but for their routing, in intrastate commerce inasmuch as they are conducted as a subterfuge to evade the laws of Pennsylvania; that they are not in violation, however, of the Interstate Commerce Act; and that these complaints, to the extent that they embrace such activities, also should be dismissed, to the extent not adjudicated herein.

An appropriate order will be entered.

COMMISSIONER GOFF did not participate.

APPENDIX

Certificate No. MC-71536

Between New York, N. Y., and points in Pennsylvania, as follows:

(G)—From New York over irregular routes to Paterson, N. J., thence over U. S. Highway 46 to Hackettstown, N. J., thence over New Jersey Highway 24 to Phillipsburg, N. J., thence over U. S. Highway 22 via Easton, Pa., to Allentown, Pa., thence over U. S. Highway 309 to junction Pennsylvania Highway 29, thence over Pennsylvania Highway 29 via Hazleton, Pa., to junction Pennsylvania Highway 93, thence over Pennsylvania Highway 93 to Berwick, Pa., thence over U. S. Highway 11 via Danville, Pa., to Northumberland, Pa.

(F)—From New York as specified above to Allentown, Pa., thence over U. S. Highway 22 to Hamburg, Pa., thence over U. S. Highway 122 to Sunbury, Pa., thence over Pennsylvania Highway 14 to Williamsport, Pa., and thence over U. S. Highway 220 to Lock Haven, Pa.;

From New York as specified above to Danville, Pa., thence over Pennsylvania Highway 54 to Elysburg, Pa., and thence over Pennsylvania Highway 242 to Paxinos, Pa.

(E-2)—From New York as specified above to Hackettstown, N. J., thence over U. S. Highway 46 to Portland,

Pa., thence over U. S. Highway 611 to Scranton, Pa., and thence over U. S. Highway 11 to Berwick, Pa.;

From New York as specified above to Scranton, Pa., and thence over U. S. Highway 6 to Carbondale, Pa., and thence over Pennsylvania Highway 70 to Forest City, Pa.

(E-1)—From New York as specified above to Easton, Pa., thence over U. S. Highway 611 to Stroudsburg, Pa., thence over U. S. Highway 209 to junction Pennsylvania Highway 115, and thence over Pennsylvania Highway 115 to Kingston, Pa.;

From New York as specified above to Allentown, Pa., and thence over U. S. Highway 309 to Wilkes-Barre, Pa.;

From New York as specified above to Allentown, Pa., thence over U. S. Highway 309 to junction Pennsylvania Highway 563, thence over Pennsylvania Highway 563 to junction unnumbered highway, thence over unnumbered Highway to Red Hill, Pa., thence over Pennsylvania Highway 29 to Hereford, Pa., thence over Pennsylvania Highway 100 via Pottstown, Pa., to junction Pennsylvania Highway 83, thence over Pennsylvania Highway 83 to junction Pennsylvania Highway 683, and thence over Pennsylvania Highway 683 to Spring City, Pa.;

From New York as specified above to Allentown, Pa., and thence over U. S. Highway 222 to Ephrata, Pa., and

Return over the above specified regular routes to Paterson, N. J., thence over irregular routes to New York.

(H)—Service is authorized to and from all intermediate points on the above-specified routes, and to and from the off-route points of Boonton, Belvidere, and Oxford, N. J., Nuremberg, Sheppton, Mifflinberg, Middleburg, Bearbortown, White Haven, Perkasie, Stowe, Gilbertville, Topton, Fleetwood, West Reading, Sinking Spring, Denver and Mahton, Pa., those in New Jersey within 35 miles of Columbus Circle, New York, N. Y., and those within ten miles of each of the following points: Phillipsburg, Allentown, Danville, Forty Fort, Hazleton, Scranton, Shamokin, Stroudsburg, Sunbury, and Williamsport, Pa.

Certificate No. MC-71536

(Sub-No. 1)

(D)—Between Easton, Pa., and Wernersville, Pa.;

From Easton, over U. S. Highway 22 to Allentown, Pa., thence over U. S. Highway 222 to Reading, Pa., thence over U. S. Highway 422 to Wernersville, Pa.; and return over the same route.

Service is authorized to and from the off-route points of Emmaus, Macungie, Topton, Fleetwood, Hamburg, Hellertown, and Pottstown, Pa.

(E)—Between Allentown, Pa., and Scranton, Pa., as follows:

From Allentown over U. S. Highway 309 via Mauch Chunk, Pa., to Hazleton, Pa., (also from Mauch Chunk over U. S. Highway 209 to Tamaqua, Pa., thence over Pennsylvania Highway 29 to Hazleton), thence over U. S. Highway 309 to Pittston, Pa., and thence over U. S. Highway 11 to Scranton;

From Allentown over U. S. Highway 22 to Bethlehem, Pa., thence over unnumbered highway to Bath, Pa., thence over Pennsylvania Highway 45 to Nazareth, Pa., thence over Pennsylvania Highway 12 to Wind Gap, Pa., thence over Pennsylvania Highway 702 to Bangor, Pa., thence over Pennsylvania Highway 712 to junction U. S. Highway 611, and thence over U. S. Highway 611 to Scranton; and

Return over these routes to Allentown.

Service is authorized to and from the off-route points of Summithill, Mt. Carmel, Pottsville, Schuylkill Haven, Orwigsburg, Ashland, Shenandoah, Girardville, Frackville, Port Carbon, Mahonoy City, Duryea, Olyphant, Taylor, Luzerne, Old Forge, Plymouth, Kingston, West Pittston, Freeland, Centralia, St. Clair, New Philadelphia, and Throop, Pa.

(C-1)—Between Allentown, Pa., and Morrisville, Pa., as follows:

From Allentown over U. S. Highway 309 to Quakertown, Pa., thence over Pennsylvania Highway 313 to junction Pennsylvania Highway 113, thence over Pennsylvania Highway 113 to Dolyestown, Pa., thence over U. S. Highway 202 to New Hope, Pa., and thence over Pennsylvania Highway 32 to Morrisville;

From Allentown over U. S. Highway 309 to Sellersville, Pa., thence over Pennsylvania Highway 813 via Telford, Pa., to junction Pennsylvania Highway 63, thence over Pennsylvania Highway 63 via Hatfield, and Lansdale, Pa., to junction U. S. Highway 202, thence over U. S. Highway 202 to Buckingham, Pa., thence over Pennsylvania Highway 113 to Newtown,

Pa., thence over Pennsylvania Highway 532 to Yardley, Pa., and thence over Pennsylvania Highway 32 to Morrisville; and

Return over these routes to Allentown.

Service is authorized to and from the off-route point of Silverdale, Pa.

Between Pennsylvania points and points in New Jersey as follows:

From Easton, Pa., over unnumbered highways via Phillipsburg, Alpha, Warren Glen, and Spring Mills, N. J., to Milford, N. J.;

From Portland, Pa., across the Delaware River to junction New Jersey Highway 8, thence over New Jersey Highway 8 to Columbia, N. J.,

From New Hope, Pa., over U. S. Highway 202 to Lambertville, N. J., thence over unnumbered highway via Titusville, N. J., to Trenton, N. J.;

(B-1)—From Morrisville, Pa., over U. S. Highway 1 to Trenton, N. J., thence over unnumbered highway via Titusville, N. J., to Lambertville, N. J.;

(C)—From Easton, Pa., over U. S. Highway 22 via Phillipsburg, Clinton, and Clinton Corners, N. J., to Plainfield, N. J.;

From Easton across the Delaware River to junction New Jersey Highway 24, thence over New Jersey Highway 24 to junction New Jersey Highway, S24, thence over New Jersey Highway S24 to Hackettstown, N. J., and thence over U. S. Highway 46 to Netcong, N. J., and

Return over these routes to the above-specified Pennsylvania origin points.

(B)—Between Clinton, N. J., and Trenton, N. J.:

From Clinton over U. S. Highway 22 to junction New Jersey Highway 69, thence over New Jersey Highway 69 to Trenton, and return over the same route.

Between Scranton, Pa., and Endicott, N. Y.:

From Scranton over U. S. Highway 11 to Binghamton, N. Y., thence over New York Highway 17C to Endicott, and return over the same route.

Service is authorized to and from all intermediate points on the above-specified routes.

Certificate No. MC-71536 (Sub-No. 3)

Regular Route:

(A)—*General commodities*, except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment,

Between Philadelphia, Pa., and New York, N. Y., serving all intermediate points:

From Philadelphia over U. S. Highway 1 to Newark, N. J., and thence over city streets and connecting highways to New York, and return over the same route.

Irregular Routes:

(A-1)—General commodities, except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment,

Between Philadelphia, Pa., on the one hand, and on the other, points within 15 miles of Philadelphia, Pa.

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, Division 1, held at its office in Washington, D. C., on the 30th day of November, A. D. 1960.

No. MC-C-2671
PENNSYLVANIA PUBLIC UTILITY COMMISSION
v.
HUDSON TRANSPORTATION COMPANY

No. MC-C-2696
PENNSYLVANIA PUBLIC UTILITY COMMISSION
v.
ARROW CARRIER CORPORATION

No. MC-113933
HUDSON TRANSPORTATION COMPANY—
PETITION FOR DECLARATORY ORDER

No. MC-71536
ARROW CARRIER CORPORATION—
PETITION FOR DECLARATORY ORDER

No. MC-71536 (Sub-No. 1)
ARROW CARRIER CORPORATION—
PETITION FOR DECLARATORY ORDER

No. MC-71536 (Sub-No. 2)
ARROW CARRIER CORPORATION—
PETITION FOR DECLARATORY ORDER

No. MC-71536 (Sub-No. 3)
ARROW CARRIER CORPORATION—
PETITION FOR DECLARATORY ORDER

It appearing, That the above-titled proceedings numbered MC-C-2671 and MC-C-2696 being at issue upon complaints and answers on file, and full investigation of the matters involved having been made;

It further appearing, That upon consideration of the certificates bearing the numbers MC-113933, MC-71536, and MC-71536 (Sub-No. 1, 2, and 3), and of petitions of the above named carriers for declaratory orders pursuant thereto, or interpretations thereof, and good cause appearing therefor;

And it further appearing, That the said division, on the date hereof, has made and filed a report herein containing its findings of fact and conclusions thereon, which report is hereby made a part hereof:

It is ordered, That said petitions, except to the extent granted in said report, be, and they are hereby, denied.

And it is further ordered, That said complaints be, and they are hereby, dismissed, except to the extent they are adjudicated in said report.

By the Commission, division 1.

Harold D. McCoy,
Secretary.

(Seal)